

CHAPTER 13

**CASSIA COUNTY AGRICULTURAL PROTECTION AREA  
REGULATIONS**

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**2-13-1:**                    **NAME AND MISSION:** The name of the organization formed by the adoption of this ordinance is the Cassia County Agricultural Protection Area Commission, hereinafter referred to as **CAPAC**. The mission of **CAPAC** is to provide an opportunity to protect and enhance “working lands” for those who elect, and qualify, to participate as agricultural protection areas within Cassia County, and to advise and recommend to the Board of Cassia County Commissioners, hereinafter referred to as the Board, the designation of lands and agricultural preservation lands. This ordinance sets out the regulations and process for creation of Agricultural Protection Areas within Cassia County, Idaho.

**2-13-2:**                    **AREA OF CONCERN:** The area of concern lies within privately owned lands located entirely within the bounds of Cassia County, Idaho.

**2-13-3:**                    **DEFINITIONS:** For purposes of this Chapter, the following definitions will apply unless the context clearly indicates or requires a different meaning. Additionally, for terms not defined herein, the common meaning attached thereto by the Oxford English Dictionary will apply.

- A. **Agricultural Production:** means activities or conditions conducted on land actively devoted to agriculture as defined in Section 63-604, Idaho Code, or on forest land as defined in Section 63-1701, Idaho Code.
- B. **Agricultural Protection Area (APA):** means specific parcels of land in a designated geographic area voluntarily created under the authority of this Chapter for the purpose of protecting and preserving land actively devoted to agriculture.
- C. **Applicant:** means any person or entity who owns five (5) contiguous acres or more of land that has been in active agriculture or forest production for the previous three (3) consecutive years, consistent with the provisions of 63-604 and 63-1701, Idaho Code, and who voluntarily applies for that land to be part of an agricultural protection area.
- D. **Board:** means the Board of Commissioners for Cassia County, Idaho.
- E. **Cassia Agriculture Protection Area Commission (CAPAC):** means the advisory board created under this Chapter, and pursuant to Section 67-9705, Idaho Code, that advises the governing body on designations of Agricultural Protected Areas.
- F. **Contiguous:** means being in actual contact or touching along a boundary line or at a point, except any land separated by reason of a roadway or right-of-way will still be considered to be contiguous.
- G. **County:** means Cassia County, Idaho.
- H. **For-profit:** means the enterprise will, over a period of time, make or attempt to make a return of income exceeding expenses.
- I. **Hardship:** means a situation or circumstance over which a landowner in an agricultural protection area has no control and can then petition for removal from such agricultural protection area designation for reasons that include, but are not limited to, an adverse result in litigation against the farm or landowner, death of a close family member that would lead to unanticipated financial hardships, significant tax liabilities, bankruptcy due to another person's fraud, or any other illegal activity.
- J. **Platting:** means the filing of a drawing, map, or plan of a subdivision or replatting of such, including certification, descriptions and approvals with the proper county or city officials.
- K. **Proposal:** means written documents and other documents submitted to the **CAPAC** or Board from a landowner regarding his property and any applications under this Chapter.

**2-13-4: AUTHORITY, ROLE AND DUTIES:** **CAPAC** will have the role of providing for meetings and hearings to obtain advice on the agricultural needs of the County. Inasmuch as this committee is created by Idaho statute, and is appointed by, and serves the Board, all meetings and hearing shall be conducted in accordance with the Idaho Open Meetings law, Chapter 2, Title 74 of the Idaho Code. **CAPAC** may conduct informal meetings with public officials and agencies, agriculture or educational professionals and other persons, entities or organizations that may provide information and assistance in evaluating those agricultural needs of the County. Further, **CAPAC** may make recommendations to the Board concerning the process by which the **CAPAC** will receive, review and offer recommendations regarding landowner proposals seeking agricultural preservation status in the County, to the Board. **CAPAC** will review applications from private landowners who are seeking inclusion as agricultural preservation status and make recommendations to the Board on such applications.

**2-13-5: MEMBERS:**

**A. Representation and Balance**

1. Members of the **CAPAC** will be appointed by the Commissioners for a term of six (6) years. Initially, two (2) of the members will be appointed for a term of four (4) years, another two (2) members will be appointed for a term of five (5) years and the fifth (5<sup>th</sup>) member will be appointed for an initial six (6) year term. Those reappointed or their replacements, at the conclusion of the afore-stated initial terms shall be appointed to serve for a six (6) year term. All subsequent terms shall continue to rotate on a six (6) year basis thereafter.
2. Membership on the **CAPAC** shall be on a volunteer, non-paid basis and shall be limited to five (5) members. The **CAPAC** shall be a "representative", "balanced" group, and may include representatives from the following:
  - Local soil and water conservation board of supervisors;
  - Local cattlemen's association board;
  - County Farm Bureau Board;
  - Irrigation district or water user's association board;
  - Grower/commodity association or commission board;
  - County planning and zoning.
3. A membership list shall be maintained in the Office of the County Commissioners and shall be updated on a regular basis to reflect the

existing membership of the **CAPAC**. The members in "good standing" shall constitute the voting membership of the **CAPAC**.

4. The "good standing" of a member shall be determined by regular attendance at meetings, and participation in good faith and in accordance with this Resolution. Members determined not to be in good standing by the Board will be replaced pursuant to the following paragraph.

**B. New Appointments and Selection Criteria:** New appointments or reappointments of existing members will be made by the Commissioners on the basis of retaining the desired representation and balance, as defined above, and the number of commissioners in good standing at five (5) commissioners. In addition to representation, the following factors are to be considered in making new appointments.

1. The members of the **CAPAC** should have the support of the agencies or constituencies with which they are associated, and be individuals that can work effectively with others to help develop and plan strategies according to the stated mission and goals.
2. The members should be team-oriented individuals, with demonstrated and effective leadership skills, who will work well in a cooperative and consensus building environment, while exercising reasoned and independent judgment relative to the applications brought before them for consideration.
3. Currently serving members whose term of appointment is expiring may indicate their willingness to continue serving to the Commissioners or may be contacted by the Commissioners regarding their willingness to continue to serve in the group. The final decision regarding reappointment shall lie with the Commissioners.

**C. Resignation of Members:** Any member desiring to resign from the **CAPAC** shall submit his or her resignation in writing to the Office of the Cassia County Commissioners for action. He or she may nominate a replacement member for consideration by the Commissioners. Approval of the replacement member or new appointment will be decided solely by the Commissioners.

**2-13-6: ORGANIZATION****A. Officers**

1. The officers shall be a Chair and Vice Chair. Officers will be selected by the process of nomination by a Commission member, and majority vote in favor of a certain person to serve as an officer.
2. Election of officers shall take place in January of each year after the new members have been appointed to fill the slots vacated by those whose terms of service expired on December 31st that year. Candidates for Chair and Vice Chair will be nominated from the floor at the **CAPAC** organizational meeting. Officer's whose terms are currently expiring are eligible for re- nomination. A majority vote of a quorum of the **CAPAC** will then elect a Chair and Vice Chair. The officers will serve for two (2) full years, and continuing on in office thereafter only until the annual organizational meeting can be held and completed, with new officers being elected.
3. The Chair shall conduct the Commission meetings. The Chair shall ensure availability of an adequate meeting place; that meeting notices and agendas are prepared and published; that accurate minutes of meetings are kept; and that meetings are conducted and facilitated fairly and effectively; and that meetings serve the purposes as stated hereunder.
4. The Vice Chair shall take the place of the Chair in case the Chair cannot attend a meeting or resigns. In the event that the Chair resigns and the Vice Chair becomes Chair for the remainder of the term, then the quorum of Commissioners shall elect a new Vice Chair from the Group to serve the remainder of the term.
5. The Commission will ensure that a secretary is present at each meeting to keep an accurate record of all meetings and actions taken thereat, to take attendance of Commission members, and to prepare meeting notices and agendas in conformity with Idaho's Open Meetings Law. The Chair and Secretary will work together to ensure that all Commission members are informed of meeting times and places.

**2-13-7:**                    **APPLICATION CONTENTS:** An application for property to be given status in Cassia County as Agricultural Protected Lands must be filed with the Cassia County Commissioner's Office, along with such other information as may hereafter be required. The application will not be deemed to be filed until the complete application has been tendered, and until such time as complete will only be considered to be lodged. No hearing will be scheduled until a complete application is filed with the County.

- A. A complete application will contain the following:
1. Applicant Information, including Name, address, email contact and telephone numbers;
  2. Legal Description: Current legal description of the exact parcels, structures, and facilities proposed to be included in the APA request.
    - a. At a minimum, to qualify for APA designations, the land must be:
      - i. At least five (5) contiguous acres;
      - ii. Actively devoted to an agriculture or forest purpose;
      - iii. Assessed as agriculture or forest land; and
      - iv. Located within a land use zone that allows for agricultural or forest use.
  3. Proof of land ownership.
  4. A map showing the boundaries of the proposed APA, and including all existing adjacent public rights-of-way, and all existing surrounding or adjacent city areas of impact.
  5. Production Records pertaining to the property for which protected status is being requested, such as, but not limited to:
    - a. financial records, contracts or sales agreements, production records or other documentation showing production, or Natural Resource Conservation Service (NRCS) records or crop reports;
    - b. Also, the number of years the land has been in agricultural or forest production;
    - c. The types of agricultural or forest commodities produced; and
    - d. The applicant's plan to continue using the land for agricultural or forest purposes.

6. Narrative: A narrative statement explaining the current contiguous acreages of land, land use, agricultural productivity, and other relevant characteristics of the land to be included in the APA, to include but not necessarily be limited to: soil surveys, water rights, and any other relevant environmental assessments.
7. The stated reasons for seeking the APA designation.
8. Fee: A fee as set by resolution of the County Commissioners.
9. Applicant will submit a copy of the completed application to the applicable highway district(s), irrigation or water district(s); and if in or adjacent to an existing city area of impact, a copy of the application will be submitted to the applicable city for review and comment. Applicant will provide proof as part of its application of such submissions. Particularly, the County seeks information and written comment from the applicable entities regarding any conflict with the following:
  - a. Existing city annexation or development plans or agreements;
  - b. Planned transportation corridors or future public right-of-ways;
  - c. Planned airport development or expansion;
  - d. Any planned developments with existing entitlements.

**2-13-8:****MEETINGS:****A. Locations and Dates:**

1. The regular meeting of the **CAPAC** shall be held at a place and time determined by the Commission. Meetings shall be held at least on a quarterly basis.
2. Special meetings may be called by the Chair or through a written request by the majority of the Commission members. The purpose of any special meeting must be stated on the meeting agenda. Notices of meetings and publication of agendas must comply with Idaho Code, Title 74, Chapter 2, the Idaho Open Meetings Law or any successor law.

**B. Procedures:**

1. Meetings shall be conducted by the Chair. Specifically, the Chair is responsible for ensuring: the recording and distribution of meeting notes; that meetings are conducted and facilitated effectively; that meetings are productive and within the scope of the mission and goals of the **CAPAC**.
2. Consideration may be given to the use of a professional facilitator not directly affiliated with the membership, for agendas that may be especially controversial.
3. Rules of conduct shall be strictly adhered to through meeting facilitation; members should listen actively; members shall be entitled to speak and be heard; problems and issues will be attacked – not people. Matters coming before **CAPAC** shall be heard in accordance with the provisions of Cassia County Resolution No. 2002-12-02, or its successor. If the matter is not covered by the provisions of that resolution, then specific rules of conduct or working guidelines may be formally recommended by the **CAPAC** to Commissioners for adoption by the Commissioners.
4. Commission members will not discuss any pending applications with the applicant or its agents, any other Commission member, or with any member of the public outside of a hearing that is conducted with reference to the subject property.

**C. Review Process:** Upon receipt of an application, the **CAPAC** shall review the proposal and make recommendations to the Board within sixty (60) days of receipt of the **completed** application. The applications will be evaluated on the following criteria:

1. The land for which application is being made is at least five (5) contiguous acres in size and is, and has been, actively devoted to agriculture or forest production.
2. Adjacency to, or inclusion within, an existing area of city impact.
3. Possible conflict with an existing city annexation or development plans or agreements.
4. Proximity to existing public rights-of-way.
5. Proximity to planned transportation corridors or future public rights-of-way.
6. Proximity to planned airport expansion or development.



7. Proximity to planned development with existing entitlements.
8. The land for which application is being made must be actively devoted to Agriculture, as defined by Idaho Code, 63-604, which means:
  - a. It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or
  - b. It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or
  - c. It is used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise or is leased by the owner to a bona fide lessee for grazing purposes; or
  - d. It is in cropland retirement or rotation program.
9. The land for which application is being made must have been actively devoted to agriculture during the last three (3) growing seasons.
10. Other local impacts relevant to the proposed APA.

**D. Disqualifying Factors:** Should any of the following factors exist with respect to any application, the subject property will not qualify for protected status under this ordinance or pursuant to state law:

1. The proposed subject property is part of a platted subdivision, it will not qualify as land actively devoted to agriculture.
2. The proposed subject property is utilized for the grazing of any animals that are kept primarily for personal use or pleasure rather than as part of a bona fide for-profit enterprise will not qualify as land actively devoted to agriculture.
3. The proposed subject property does not consist of at least five (5) contiguous acres.
4. The proposed subject property is not actively devoted to agriculture or forest purposes.
5. The proposed subject property is not assessed as agriculture or forest land.
6. The proposed subject property is located within an existing land use zone that does not allow for agricultural or forest use.

**E. Decisions and Quorums:** All actions, recommendations and decisions (other than those specified otherwise in the By-Laws) made by the **CAPAC** must be made by simple majority vote of participating members taken when a quorum of the group

is constituted in a lawful meeting.

1. A quorum will consist of at least three (3) of the five (5) members being present at the meeting.
2. All members present at a lawfully called meeting will be counted to determine the existence of a quorum, even though some of those members may not be participating in the action.
3. Presence of a quorum member may be obtained telephonically if done in accordance with state law.
4. Once a quorum is determined to exist, it will remain so, until the number of group members present at the meeting shall fall below three (3). When a quorum ceases to be present at the meeting, then the Chair shall close the meeting, and no further action shall be taken until a quorum is re-constituted.
5. The **CAPAC** will review each application with respect to those matters indicated in Sections C and D, of Section 2-13-8, hereinabove, and will make a written, reasoned recommendation to the Board based upon those standards. This review will be held, and recommendation sent to the Board, within sixty (60) days of receiving such completed applications.
6. Once the **CAPAC** makes its recommendations to the Board, the Board will hold a public hearing on the Applications and make its decision, in writing reasoned statement supporting such decision, within sixty (60) days of receiving the recommendation from the **CAPAC**. Failure by the Board to make a decision shall render the **CAPAC's** recommendation final.
7. The Board shall hold a public hearing regarding an application in accordance with the notice and hearing procedures of Section 67-6509, Idaho Code.
8. Following the public hearing, the Board may approve or deny the application to include land within an APA.
9. If approved, then upon making such decision upon an Application, the Board shall, within ten (10) days of creation of an APA, file an executed document with the Cassia County Recorder's Office containing:
  - a. The date of creation or dissolution of the APA by the Board.
  - b. A legal description of the parcel or parcels of real property to be included in the APA; and

- c. A record of the findings of the **CAPAC** and the decision of the Board.
  - d. Amend applicable land use planning maps to reflect the boundaries of designated APAs and include such information in the County's comprehensive planning process, pursuant to Section 67-6508, Idaho Code, and as a voluntary and expeditious tool to be used to proactively plan for agriculture.
10. A decision to approve or deny an APA shall be subject to judicial review.

**2-13-9:****MISCELLANEOUS:**

- A. Expansion or Modification of an APA:** An expansion, modification or removal of an existing APA shall follow the same application, review, and hearing procedures outlined in this Chapter. Any expansion of an APA shall be contiguous to the original APA.
- B. Termination of an APA:** A landowner that seeks to terminate an APA must request, in writing, a meeting with the Board. The meeting request must include proof of hardship, and shall be filed with the Assistant to the Board of Commissioners. Early termination of the APA will only occur upon proof by landowner of an undue hardship as defined hereinabove in this Chapter. The landowner seeking to terminate an APA bears the burden of proof in demonstrating the hardship. Early termination of an APA is not an encouraged action, will not be granted without clear and convincing proof of an undue hardship, and will be carefully considered.
- C. Enrollment Duration and Review:** Lands designated as an APA will remain so designated for a period of twenty (20) years. A landowner seeking to end an approved APA designation after the twenty (20) year period must notify the Board in writing of their election to not renew the land's APA designation, within six (6) months of the end of that designation term. Failure of the landowner to notify the County, or failure of the County to review the APA terms, will result in the APA designation continuing for another twenty (20) years.
- D. Fees:** An application fee will be required to cover the administrative costs, including, but not limited to, reviewing materials, conducting public meetings and

hearings, processing and recording documents, and updating county land use maps.

**E. Enforcement, Prohibitions, and Penalties:** The APA designation will not affect, and the County will continue to regulate the following land uses, even within APA designated lands:

- a. The siting of large confined animal feeding operations (CAFO);
- b. The siting of residential, commercial, manufacturing, industrial, solar energy, wind energy, or battery storage structure; or
- c. Any other nonagricultural land uses.

The Board or its agent shall be responsible for enforcing the provisions of this Chapter. Any person found to be in violation of this Chapter shall be guilty of a misdemeanor and such shall be punishable as provided for in Section 18-113, Idaho Code.

**F. Severability.** If any section, subsection, sentence, clause, or phrase of this Chapter is held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter, and they shall remain in full force and effect.